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Crl.Appeal No.740/2020

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

&

THE HONOURABLE MR.JUSTICE K. V. JAYAKUMAR

MONDAY, THE 12TH DAY OF JANUARY 2026 / 22ND POUSHA, 1947

CRL.A NO. 740 OF 2020

CRIME NO.473/2011 OF Pampady Police Station, Kottayam
AGAINST THE JUDGMENT IN SC NO.267 OF 2012 OF
ADDITIONAL SESSIONS COURT, KOTTAYAM ARISING OUT OF THE
JUDGMENT IN CP NO.28 OF 2012 OF JUDICIAL MAGISTRATE OF
FIRST CLASS, KOTTAYAM

APPELLANT/ACCUSED:

BABU C.G., S/O. GOPALAN, THONNANAMKUNNEL, MAILADIPADI
BHAGOM, VELLOR P.O, PAMPADY.

BY ADV SMT.V.VIJITHA

RESPONDENT/COMPLAINANT:

STATE OF KERALA, REP. BY THE PUBLIC PROSECUTOR, HIGH
COURT OF KERALA, ERNAKULAM-682 031

BY ADV NEEMA T V, GP

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
17.11.2025, THE COURT ON 12.01.2026 DELIVERED THE
FOLLOWING:



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‘CR’

JUDGMENT

K. V. Jayakumar, J.

This appeal is preferred by the sole accused in S.C. No.267/2012 of the Additional Sessions Court-IV, Kottayam. The appellant stood for trial for the offences punishable under Sections 302 and 324 of the Indian Penal Code ('IPC' for the sake of brevity).

2. The learned Sessions Judge found the accused guilty of the offences punishable under Sections 302 and 324 IPC and was sentenced to undergo imprisonment for life and to pay a fine of Rs.50,000/- under Section 302 IPC and imprisonment for a period of three years for the offence punishable under Section 324 of the IPC. In default of payment of the fine, the accused shall undergo rigorous imprisonment for six months under Section 302 IPC.

The prosecution case

3. The prosecution allegation, in brief, is that, on 18.09.2011 at about 8.45 p.m., the accused, Babu C. G., was playing cards at the rubber plantation, on the eastern side of the stage, wherein the Onam Celebration of Royal King Arts and Sports Club, Kunnelpeedika was performed. PW2, Devarajan, obstructed the game and due to this animosity, the accused



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attacked PW2. The prosecution further alleges that, on seeing the incident, the deceased Vijeesh intervened and attempted to save PW2 (Devarajan). In the meantime, the accused stabbed the deceased on his right shoulder joint causing a deep injury. The accused had also threatened the persons gathered by brandishing MO-1 knife. The prosecution further alleges that when PW3, Kiran Raju, attempted to catch MO-1 knife, the accused had also stabbed him on his left wrist and inflicted a stab injury on the right shoulder of PW4, K. K. Soman. Even though the deceased was taken to the hospital, his life could not be saved.

Registration of Crime and Investigation

4. PW1, Rajesh, a cousin of the deceased, lodged Ext.P1 FIS before the SI of Police, Pampadi Police Station at about 7.15 a.m., on 19.09.2011. On the basis of Ext.P1 FIS, PW28, S. Pratheep, S.I. of Police registered Crime No.473 of 2011 under Sections 324 and 302 of IPC. PW28 has also registered a counter case as Crime No. 474 of 2011 alleging that PW1, Rajesh, attacked the accused.

5. PW29, Saju Varghese, the Circle Inspector of Police, Pampadi Police Station took up the investigation on that day itself. He prepared Ext.P4 Inquest Report from the Medical College Hospital, Kottayam. He visited the place of occurrence in the presence of witnesses and scientific assistants and prepared Ext.P5 scene mahazar. As per Ext.P5 scene mahazar, MO-1, a blood-stained knife was seized. He also seized



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MO-3 sandal and MO-7 saffron dhoti.

6. PW29 questioned the material witnesses, completed the investigation and filed the final report under Section 173(2) of the Cr.P.C. He also conducted the investigation of the counter case, i.e., Crime No. 474 of 2011 and laid the charge sheet for the offences punishable under Sections 143, 147, 323 and 324 r/w Section 149 of the IPC. In that case, PW1 - Rajesh, PW2 - Devarajan, PW3 - Kiran Raju, PW4 - Soman, PW6 - Vijayan, and PW8 - Rajeesh are the accused.

The Proceedings before the Trial Court

7. After completing the initial steps, the case was committed to the Sessions Court, Kottayam. The learned Sessions Judge, Kottayam, made over the case to the Additional Sessions Court-II, Kottayam. The learned Sessions Judge framed the charge after hearing both sides. When the charge was read over and explained to the accused, he pleaded not guilty and claimed to be tried.

8. PWs. 1 to 6 were examined by the Additional Sessions Court-II, Kottayam. Thereafter, on 30.05.2016, the Sessions Case was transferred to the Additional Sessions Court-IV, Kottayam by the Sessions Judge. The learned Additional Sessions Judge, Court-IV examined PWs. 7 to 29. Thereafter, the accused was questioned under Section 313(1)(b) of the Code of Criminal Procedure and he denied the incriminating circumstances put to him. The contention of the accused was that he was



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falsely implicated in the case. On the side of the defence, Ext.D1 was marked. The learned Additional Sessions Judge, after the completion of the trial, convicted and sentenced the accused under Sections 302 and 324 of the IPC as aforesaid.

The Submissions of the learned Counsel for the Appellant

9. Adv. Vijitha V., learned counsel for the appellant, submitted that the trial court convicted the appellant without properly appreciating the evidence. The prosecution has failed to aver and prove the charge against the appellant beyond a reasonable doubt.

10. The learned counsel for the appellant submitted that the trial of this case is vitiated by grave illegalities and therefore, the appellant is entitled for an acquittal. The learned counsel submitted that the accused was not represented by a competent lawyer for his defence. The accused himself cross-examined the material witnesses, ie., PWs. 1 to 6. It is pointed out that the accused is a layman having no expertise in law and was permitted to cross-examine the crucial and material witnesses, and thereby, great prejudice is caused to him.

11. The learned counsel for the appellant further submitted that the learned Additional Sessions Judge had examined certain material witnesses in the absence of the accused, and thereby, he was not able to take up his defence.



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12. The learned counsel further pointed out that the learned Additional Sessions Judge herself conducted the chief examination of certain material witnesses in the absence of the Public Prosecutor, which is illegal and impermissible. It is submitted that the learned Sessions Judge herself assumed the role of the Public Prosecutor and conducted the chief examination. In short, the learned counsel for the appellant would submit that the learned Sessions Judge has denied a fair trial to the accused and thereby failure of justice was occasioned and therefore the finding of guilt, conviction and sentence are legally unsustainable.

The Submissions of the learned Public Prosecutor

13. On the other hand, the learned Public Prosecutor would submit that the prosecution has proved the charge against the appellant beyond a reasonable doubt. The trial court evaluated the evidence in the correct perspective, and no interference is warranted in this matter.

14. The learned Public Prosecutor submitted that the trial court rightly believed the evidence of PWs. 2, 3 and 4, the eyewitnesses, and arrived at a proper conclusion as to the guilt of the accused.

15. The learned Public Prosecutor further submitted that the accused himself has rejected the service of a Legal Aid Counsel and decided to cross-examine the witnesses by himself. The learned Public Prosecutor submitted that the accused conducted the case himself, at his own peril, and at this appellate stage, he cannot contend that he was



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denied a fair trial. The learned Additional Sessions Judge has taken all earnest efforts to ensure that the accused is represented by a competent lawyer.

The Evidence let in by the Prosecution

16. PW1 (Rajesh) lodged Ext.P1 FIS to the S.I. of Police, Pampadi Police Station. On the basis of Ext.P1 FIS, PW28 (S. Pratheep), registered Ext.P16 FIR. PW1 is not an eyewitness to the incident, even though he was present near the place of occurrence.

17. PWs. 2, 3, and 4 were injured eyewitnesses to the case. PW2, Devarajan, would testify that the incident occurred in a rubber plantation at a place called 'Kunnelpeedika'. On 18.09.2011, the Onam celebration of the Royal King Arts and Sports Club, Kunnelpeedika, was held inside the rubber estate. He reached the place of occurrence at about 7 p.m. They started playing cards after forming two different groups. In one group, apart from PW2, the accused (Babu), PW2 (Devarajan), PW6 (Vijayan) were the members. At about 7.30 p.m., someone caused obstruction to the play by throwing soil. The first incident took place when some disputes arose between the players regarding the amount. In the meantime, the accused abused and kicked him. According to PW2, there was an altercation and scuffle between the players. Seeing the incident, the deceased, Vijeesh, intervened and there was a scuffle between the deceased and the accused. Further untoward incidents were prevented due



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to the intervention of the people gathered there.

18. The second incident was between 11.30 - 11.45. When PW2 went behind the stage, the accused kicked him. As a result, PW2 lost his balance and fell on the ground. Subsequently, the accused further attacked PW2 by inflicting a forceful kick to his chest. During this incident, the deceased (Vijeesh) along with several other individuals, hurriedly arrived at the scene.

19. When the deceased Vijeesh tried to lift PW2, the accused inflicted a stab injury on the shoulder of the deceased. PWs. 3 and 4, the other eyewitnesses also gave a similar version about the incident. PW5, Rajamma, is the mother of the deceased (Vijeesh) and PW6, Vijayan, is the father of the deceased.

20. PW17 (Dr. Rajeev V.M.) is the Associate Professor of Medical College Hospital, Kottayam who conducted the autopsy on the body of the deceased (Vijeesh) and issued Ext.P9 Postmortem Certificate. He has noted three ante-mortem injuries on the body of the deceased.

21. PW28 registered Ext.P16 FIR. PW29, the Circle Inspector of Police, conducted the investigation and laid the charge sheet.

The Analysis

22. The main contention of the learned counsel for the appellant is that the trial is vitiated by grave illegalities and irregularities. The appellant/accused was not represented by a competent lawyer having



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expertise in criminal law and thereby, his valuable right of defence was prejudiced. The crucial witnesses, PWs. 1 to 6 were cross-examined by the accused himself. It is pointed out that the accused was in judicial custody throughout the investigation and trial.

23. Before we address the issue of denial of fair trial, it would be useful to extract the relevant provisions of the Constitution of India and the principles laid down by the Apex Court on this point. Articles 21, 22 and 39A of the Constitution of India read as follows:

21. Protection of life and personal liberty.—No person shall be deprived of his life or personal liberty except according to procedure established by law.

22. Protection against arrest and detention in certain cases.—(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

(3) Nothing in clauses (1) and (2) shall apply—

(a) to any person who for the time being is an enemy alien; or

(b) to any person who is arrested or detained under any law providing for preventive detention.

(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless—



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(a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:

Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7); or

(b) such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7).

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

(6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose.

(7) Parliament may by law prescribe—

(a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4);

(b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and

(c) the procedure to be followed by an Advisory Board in an inquiry under sub-clause (a) of clause (4).

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39A. Equal justice and free legal aid.—The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.”

24. Article 21 of the Constitution of India enjoins that the life and personal liberty of a person can be curtailed only according to the procedure established by law. The said Article prohibits the deprivation of life or personal liberty except in accordance with the procedure established by law.

25. In **Maneka Gandhi v. Union of India**¹, the Apex Court declared that the procedure referred to in Article 21 of the Constitution should be ‘just, fair, and reasonable’.

26. Article 21 of the Constitution is the very foundation on which the entire structure of procedural law is built, whether in civil, criminal, or any other branch of law.

27. Article 21 of the Constitution mandates that any procedure adopted to interfere with the liberty or life of a person shall not be unfair, arbitrary, or violative of natural justice. In other words, this Article guarantees that notice shall be given to the affected parties, an opportunity to be heard shall be afforded, and the order passed thereon should be a speaking and reasoned order.

¹ (AIR 1978 SC 597)



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28. In order to ensure fairness and justice, the Code of Criminal Procedure, 1973, and the present code, Bharatiya Nagarik Suraksha Sanhita, 2023, provide various provisions. For example, Chapter XVII - (Section 211 to 224) states about the charge, its contents, particulars of charge, alteration of charge and so on.

29. The Code of Criminal Procedure deals with four types of trial procedures:

- (a) Trial before a Court of Session (Chapter XXVIII - (Sections 225 to 237)).
- (b) Trial of warrant - cases by Magistrate (Chapter XIX - (Sections 238 to 250)).
- (c) Trial of summons - cases by Magistrate (Sections 251 to 259).
- (d) Summary trials by a Magistrate (Sections 260 to 265).

30. Trial by a Court of Session is considered the most significant, as the Sessions Judge is empowered to impose a sentence of imprisonment for life or even capital punishment. Chapter XVIII of the Code provides various safeguards and measures to ensure a fair trial at various stages of the trial. The framing of charge under Section 228 of the Code is intended to give notice to the accused what exactly is the allegation against him, so that he should take his defence.

31. Article 22 of the Constitution guarantees protection to all persons from arbitrary arrest and detention. The said Articles mandates that



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an arrestee shall not be detained in custody without being informed of the grounds of arrest, nor shall he be denied the right to consult and be defended by a lawyer of his own choice. Sub-clause (2) of Article 22 enjoins that the arrestee shall be produced before the nearest Magistrate within a period of 24 hours, excluding the time necessary for the journey. Exceptions to clauses (1) and (2) are provided in sub-clause (3) of Article 22, in the case of an enemy alien or a person arrested under preventive detention laws.

32. While Article 22 of the Constitution deals with the rights of an arrestee during investigation, Article 21, on the other hand, addresses fairness in trial procedures. In short, Articles 21 and 22 are the source of power for ensuring various safeguards and measures to ensure fair investigation and fair trial.

The Principles laid down by the Apex Court with respect to Fair Trial

33. In **Hussainara Khatoon and Others v. Home Secretary, State of Bihar, Patna**², the Apex Court held that free legal aid is an essential and integral part of the ‘reasonable, fair and just’ procedure guaranteed under Article 21 of the Constitution. An accused person who is poor, indigent, or otherwise unable to secure legal assistance cannot be denied legal representation, especially when his personal liberty is at stake.

² (AIR 1979 SC 1369)



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34. In **Khatri and others v. State of Bihar and Others**³, the Apex Court observed that the right to free legal services is clearly an essential ingredient of reasonable, fair and just procedure for a person accused of an offence and it is implicit in the guarantee of Article 21 of the Constitution. The state is under a constitutional mandate to provide free legal aid to an accused person who is unable to secure legal services on account of indigence. Magistrate or the Sessions Judge before whom the accused appears, is under an obligation to inform the accused that if he is unable to engage the services of a lawyer on account of poverty or indigence, he is entitled to obtain free legal services at the cost of the State.

35. In **Zahira Habibulla H. Sheikh & Anr. v. State of Gujarat & Ors.**⁴, the Apex Court in paragraphs 38 to 40 held as under: -

"38. A criminal trial is a judicial examination of the issues in the case and its purpose is to arrive at a judgment on an issue as to a fact or relevant facts which may lead to the discovery of the fact issue and obtain proof of such facts at which the prosecution and the accused have arrived by their pleadings; the controlling question being the guilt or innocence of the accused. Since the object is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout over technicalities and must be conducted under such rules as will protect the innocent, and punish the guilty. The proof of charge which has to be beyond reasonable doubt must depend upon judicial evaluation of the totality of the evidence, oral and circumstantial, and not by an isolated scrutiny.

³ (1981 (1) SCC 627)

⁴ (2004 (4) SCC 158)



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39. Failure to accord fair hearing either to the accused or the prosecution violates even minimum standards of due process of law. It is inherent in the concept of due process of law, that condemnation should be rendered only after the trial in which the hearing is a real one, not sham or a mere farce and pretence. Since the fair hearing requires an opportunity to preserve the process, it may be vitiated and violated by an overhasty, stage-managed, tailored and partisan trial.

40. The fair trial for a criminal offence consists not only in technical observance of the frame and forms of law, but also in recognition and just application of its principles in substance, to find out the truth and prevent miscarriage of justice."

36. In **Mohd. Hussain @ Julfikar Ali v. State (Govt. of NCT) Delhi**⁵, the Apex Court reiterated that every person, therefore, has a right to a fair trial by a competent Court in the spirit of the right to life and personal liberty. The object and purpose of providing competent legal aid to undefended and unrepresented accused persons is to see that the accused gets a free and fair, just and reasonable trial of the charge in a criminal case.

37. In **Natasha Singh v. CBI**⁶, the Apex Court had occasion to discuss about the concept of fair trial. Paragraph 16 of **Natasha Singh** (supra) reads thus:

⁵ (AIR 2012 SC 750)

⁶ (2013) 5 SCC 741)



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“16. Fair trial is the main object of criminal procedure, and it is the duty of the court to ensure that such fairness is not hampered or threatened in any manner. Fair trial entails the interests of the accused, the victim and of the society, and therefore, fair trial includes the grant of fair and proper opportunities to the person concerned, and the same must be ensured as this is a constitutional, as well as a human right. Thus, under no circumstances can a person's right to fair trial be jeopardised. Adducing evidence in support of the defence is a valuable right. Denial of such right would amount to the denial of a fair trial. Thus, it is essential that the rules of procedure that have been designed to ensure justice are scrupulously followed, and the court must be zealous in ensuring that there is no breach of the same.

(emphasis supplied)

38. In **Ashok v. State of Uttar Pradesh**⁷, a Bench of three Judges of the Apex Court has again emphasized the need for ensuring a fair trial to an accused. Paragraph 23 of **Ashok** (supra) reads as follows:

“Our conclusions and directions regarding the role of the Public Prosecutor and appointment of legal aid lawyers are as follows:

- a. It is the duty of the Court to ensure that proper legal aid is provided to an accused;
- b. When an accused is not represented by an advocate, it is the duty of every Public Prosecutor to point out to the Court the requirement of providing him free legal aid. The reason is that it

⁷ (2024 KHC OnLine 6668)



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is the duty of the Public Prosecutor to ensure that the trial is conducted fairly and lawfully;

- c. Even if the Court is inclined to frame charges or record examination-in-chief of the prosecution witnesses in a case where the accused has not engaged any advocate, it is incumbent upon the Public Prosecutor to request the Court not to proceed without offering legal aid to the accused;
- d. It is the duty of the Public Prosecutor to assist the Trial Court in recording the statement of the accused under S.313 of the CrPC. If the Court omits to put any material circumstance brought on record against the accused, the Public Prosecutor must bring it to the notice of the Court while the examination of the accused is being recorded. He must assist the Court in framing the questions to be put to the accused. As it is the duty of the Public Prosecutor to ensure that those who are guilty of the commission of offence must be punished, it is also his duty to ensure that there are no infirmities in the conduct of the trial which will cause prejudice to the accused;
- e. An accused who is not represented by an advocate is entitled to free legal aid at all material stages starting from remand. Every accused has the right to get legal aid, even to file bail petitions;
- f. At all material stages, including the stage of framing the charge, recording the evidence, etc., it is the duty of the Court to make the accused aware of his right to get free legal aid. If the accused expresses that he needs legal aid, the Trial Court must ensure that a legal aid advocate is appointed to represent the accused;
- g. As held in the case of Anokhilal, in all the cases where there is a possibility of a life sentence or death sentence, only those learned advocates who have put in a minimum of ten years of practice on the criminal side should be considered to be appointed as amicus curiae or as a legal aid advocate. Even in the



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cases not covered by the categories mentioned above, the accused is entitled to a legal aid advocate who has good knowledge of the law and has an experience of conducting trials on the criminal side. It would be ideal if the Legal Services Authorities at all levels give proper training to the newly appointed legal aid advocates not only by conducting lectures but also by allowing the newly appointed legal aid advocates to work with senior members of the Bar in a requisite number of trials;

- h. The State Legal Services Authorities shall issue directions to the Legal Services Authorities at all levels to monitor the work of the legal aid advocate and shall ensure that the legal aid advocates attend the court regularly and punctually when the cases entrusted to them are fixed;
- i. It is necessary to ensure that the same legal aid advocate is continued throughout the trial unless there are compelling reasons to do so or unless the accused appoints an advocate of his choice;
- j. In the cases where the offences are of a very serious nature and complicated legal and factual issues are involved, the Court, instead of appointing an empanelled legal aid advocate, may appoint a senior member of the Bar who has a vast experience of conducting trials to espouse the cause of the accused so that the accused gets best possible legal assistance;
- k. The right of the accused to defend himself in a criminal trial is guaranteed by Art.21 of the Constitution of India. He is entitled to a fair trial. But if effective legal aid is not made available to an accused who is unable to engage an advocate, it will amount to infringement of his fundamental rights guaranteed by Art.21;
- l. If legal aid is provided only for the sake of providing it, it will serve no purpose. Legal aid must be effective. Advocates appointed to espouse the cause of the accused must have good



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knowledge of criminal laws, law of evidence and procedural laws apart from other important statutes. As there is a constitutional right to legal aid, that right will be effective only if the legal aid provided is of a good quality. If the legal aid advocate provided to an accused is not competent enough to conduct the trial efficiently, the rights of the accused will be violated.

39. In **Sovaran Singh Prajapati v. State of U.P.**⁸, a three Bench Judge of the Apex Court held that the right to a fair trial is a fundamental guarantee under Article 21 and serious lapses such as ineffective legal representation, lack of cross-examination and improper recording of statements vitiate the trial. It was also observed that frequent changes in defence counsel, lack of adequate time for case preparation and immediate conclusion of arguments upon appointing new counsel raise serious concerns about fairness of legal representation, especially in cases involving death penalty, where continuity and thorough defence are crucial to upholding the right to a fair trial.

40. Again in **Dashwanth v. State of Tamil Nadu**⁹, the very same Bench of the Apex Court reiterated that constitutional right afforded to accused charged with accused to defend himself is not illusory or imaginary. Paragraph 36 of **Dashwant** (supra) is extracted below:

“The constitutional right afforded to an accused charged with an offence to defend himself is not illusory or imaginary. For the trial to be fair and reasonable, an effective opportunity to defend

⁸ (2025 KHC 6157)

⁹ 2025 SCC OnLine 2186



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must be provided to the accused and representation by a counsel of choice is an important component of this guarantee. In a case where accused is facing charges for offences which carry capital punishment, this constitutional mandate becomes even more sacrosanct, and it is the duty of the Court as well as the State to ensure that the accused is not prejudiced or deprived of a fair opportunity of defending himself in a case where he may be awarded death penalty.”

41. Now, we shall proceed to examine the order sheet and other records of the instant case, bearing in mind and guided by the principles of law declared by the Apex Court in the aforementioned judgments.

42. After the committal proceedings, the case was made over to the Additional Sessions Court-II by the Sessions Court. The records would reveal that the case was committed to the Court of Sessions on 26.07.2012. The judgment was pronounced on 16.10.2019. Throughout this period of more than 7 years, the accused remained in judicial custody.

43. On 09.08.2012, the Additional Sessions Judge - II issued production warrant to the accused and notice to the Public Prosecutor. The proceedings of 09.08.2012 read thus:

“Issue Production Warrant against accused and notice to the Public Prosecutor. To 05.09.2012”

44. On 05.09.2012, the accused was produced before the Additional Sessions Judge - II for the first time and filed an application for bail. The proceedings dated 24.09.2012 indicate that bail was granted to the accused,



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and the learned Sessions Judge directed the sureties to execute the bond and ordered the issuance of the release order.

45. Even on a subsequent date, when the accused was produced from judicial custody, the proceedings sheet is silent as to why he was not released from jail. The learned Sessions Judge adjourned the matter on several occasions between 2012 and 2014. The order passed by the Judge on 02.06.2014 is extracted below:

“Accused is produced from custody. Counsel for the accused has relinquished the vakalath. Accused submitted that he himself is conduct his case. This court offered to give Legal Assistant through the Legal Service Authority. But he refused to heard the same. Since another counter case is pending before court. Address the Sessions Judge to transfer this case to some other court. Produce the accused on 30.06.2014.”

46. The order passed on 02.06.2014 would suggest that the counsel appointed by the accused has relinquished Vakalat and the accused expressed his desire to conduct the case by himself. The offer of the learned Sessions Judge to appoint a Legal Aid Counsel was refused by the accused.

47. On 23.07.2014, the accused, on being produced, made a request for Legal Aid Counsel. Consequently, the learned Additional Sessions Judge-II addressed the Chairman, Taluk Legal Services Committee to render legal assistance to the accused.

48. On 23.08.2014, a Legal Aid Counsel was appointed by the Taluk Legal Service Committee. The order of 27.10.2014 shows that the



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accused was heard before framing charges. Thereafter, on 22.11.2014 charge was framed against him under Sections 302 and 324 of IPC, read over and explained to him. The accused pleaded not guilty and claimed to be tried.

49. The order sheet would indicate that the matter was scheduled for trial on 23.12.2014 and summons were issued accordingly. The matter was posted to 12.01.2015.

50. The order passed by the learned Sessions Judge on 12.01.2015 reads thus:

“Accused is produced from custody. CW1 to 4 present. He filed a petition stating that he had no faith in the legal aid counsel. Hence legal aid counsel has withdrawn from appearing on behalf of the accused. Accused has given another chance to engage another counsel of his own choice. Therefore, trial is adjourned. Issue stop memo. CW1 to 4 are directed to appear after getting fresh process. Produce the accused on 16.02.15.”

51. It is evident from the order passed by the learned Additional Sessions Judge-II dated 12.01.2015 that the Legal Aid Counsel has withdrawn from appearing for the accused.

52. Despite the withdrawal of the Legal Aid Counsel, summons were issued to the witnesses on 16.02.2015 without appointing a new Legal Aid Counsel or a counsel opted by the accused. The matter was posted for evidence on 25.05.2015. The order passed by the Additional Sessions Judge-II on that day reads as follows:



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“Accused produced. CW1 to 4 present. The accused himself is cross examining the witness. CW1 examined as PW1 and Ext.P1 marked. CW2 examined in chief and marked MO1 to 4 and for want of time for cross examination, adjourned to 26.05.15. CW3 and 4 present. Not examined for want of time. CW3 is bind over to 26.05.2015. Prosecution submitted that the case is to be rescheduled. When this court again asked the accused whether he is required the help of legal aid counsel. He refused that according to him he is cross examining the witnesses himself. The prosecution pointed out for equal opportunity, the accused should be given a proper counsel as legal aid. So long as the accused is not accepting that there is no meaning prosecution repeated request.

For examination both PW2 and CW3 to 26.05.2015. The prosecution is directed to stop the witnesses for tomorrow onwards for properly rescheduling the case. CW4 onwards are directed to appear on summons. Remand of the accused is extended till 26.05.15.”

53. The order passed by the Additional Sessions Judge - II on 25.05.2015 shows that the accused himself cross-examined PW1. Moreover, the accused refused to accept the service of a new Legal Aid Counsel.

54. At this juncture, the prosecution has pointed out that the accused should be given competent counsel to defend the case. But the learned Sessions Judge has turned down the request stating that the accused repeatedly rejected the offer to appoint another Legal Aid Counsel.

55. The Trial Judge stopped further proceedings and posted for rescheduling. When the matter was taken up on 26.05.2015, the order sheet



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would reveal that PWs. 2 and 3 were examined. The accused himself cross-examined those witnesses also.

56. On 29.06.2015, CW4 was examined as PW4. The order passed by the learned Judge on 07.07.2015 would show that PWs. 5 and 6 were examined and the accused himself cross-examined those witnesses. Thereafter, the matter was taken up on several occasions during 2015 and 2016. But there was no progress in the trial. The order passed by the Additional Sessions Judge - II on 30.05.2016 reads as follows:

“Case is transferred as per the Order of District Judge, No.13/16 to Addl. District & Sessions Court IV, Kottayam. Transmit the records to that court with a direction to produce the accused thereon 15.06.16.”

57. Thereafter, the matter was considered by the Additional Sessions Judge - IV, Kottayam for more than one year without rescheduling the matter for trial. On 10.04.2017 the case was rescheduled and summons were issued to the remaining witnesses. However, on 24.04.2017 the trial was stopped by the learned Sessions Judge on the ground that there was no regular prosecutor in that court. The accused continues to be in judicial custody which was extended from time to time.

58. On 31.05.2018, the learned Sessions Judge addressed the District Legal Services Authority, Kottayam to appoint a Legal Aid Counsel for the accused and summons was ordered to CW7. The matter was posted to 07.06.2018. On 07.06.2018, the Sessions Judge has passed the following



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order:

“Accused produced. CW7 present. Prosecutor absent. Counsel for accused not appointed by DLSA. Hence CW7 bound over. Issue reminder to DLSA and for examining CW7 to 13.06.2018.”

59. The order written by the learned Sessions Judge on 13.06.2018 shows that Adv. Lithin Thomas was appointed as State brief and posted the matter to 27.06.2018. On that day the Legal Aid Counsel sought time and the matter was adjourned. The witness present was bound over.

60. The trial of the case continued till 16.10.2019. On that day, the trial was concluded and the accused was sentenced to undergo imprisonment for life and to pay a fine of Rs.50,000/- for the offence punishable under Section 302 of the Penal Code.

61. We would like to extract the orders passed by the learned Sessions Judge on some effective postings:

29.08.2018	Accused not produced. CW8 examined as PW8. Produce CW7 (PW7) and CW9 & 10 to 12.09.2018.
08.10.2018	Accused produced. PW7 examined in full. CW9, 11, 12, 13 examined as PW9 to 12. Ext.P4 marked. CW10, 14, 15, 16 given up. CW20 is absent. Issue NBW to CW20 and summons to CW21 to 30 to 15.10.2018.
15.10.2018	Accused not produced. CW21, 22, 26, 28 examined as PW13 to PW16. Exts. P5 to P8 marked. CW24, 25, 27, 29 and 30 given up.



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	CW23 no more. Death Certificate produced. Issue notice to CW31 to 40. Produce accused to 29.10.2018.
29.10.2018	Accused produced. CW31, 33, 34, 37 to 40 present. Examined as PW17 to 23. Exts. P9 to P12 series marked. CW35 given up. Hence, issue summons to CW41 to 46 and NBW to CW32 and 36. Remand extended to 10.12.2018.
10.12.2018	Accused produced. CW32, 41 to 43 and 45 examined as PW24 to 28. Exts.P13 to P16 marked. Issue NBW to CW36 and 46 to 29.12.2018. Remand extended to 29.12.2018
14.01.2019	Accused not produced. CW46 present. Examined as PW29. Exts.P17 to 20 marked. MO7 to 12 marked. Examination of PW29 adjourned. PW29 bound over to 19.01.2019.
19.01.2019	Accused produced. PW29 examined in full. Exts.P21 to 27 marked. Prosecution evidence closed. For 313 to 02.02.2019.
05.04.2019	Accused produced. 313 not ready. Hence for questioning u/s.313 to 20.04.2019.
27.06.2019	Accused produced. Due to the pressure of other targeted cases this case is adjourned for hearing to 15.07.2019.
25.07.2019	Accused produced. Defence counsel absent since they are the counsels in Kevin case conducted trial in the Principal District and Sessions Court, Kottayam. Hence adjourned for hearing 05.08.2019.
17.08.2019	Accused produced. Heard the defence counsel and reply of Public Prosecutor. For Judgment



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	31.08.2019.
31.08.2019	Accused produced. For Judgment to 19.09.2019.
19.09.2019	Accused was produced. Presiding officer on leave. Remand of accused is extended. Call on 30.09.2019.
30.09.2019	Accused produced. For Judgment to 10.10.2019.
10.10.2019	Accused was produced. Presiding Officer on leave. Remand extended till 15.10.2019.
15.10.2019	Accused produced. He is found guilty of the offence u/s.302 and 324 IPC. Heard about the sentence and adjourned for pronouncing judgment and remand extended to 16.10.2019.
16.10.2019	Accused produced. He is sentenced to undergo imprisonment for life and a fine of Rs.50,000/- for the offence u/s.302 IPC. In default simple imprisonment of 6 months and sentenced to undergo imprisonment for 6 months for the offence u/s.324 IPC. Set off allowed.

62. The main contention of the learned counsel for the appellant is that a fair trial was denied to the appellant. The learned counsel for the appellant pointed out that the appellant was not represented by a competent lawyer to defend his case. The appellant himself cross examined the material witnesses that is, PWs. 1 to 6. Admittedly, the accused has no expertise in the field of law. According to the counsel for the appellant, great prejudice is caused to the appellant by proceeding with the trial of the case without a



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counsel of his own choice or by a competent legal aid defence counsel.

63. Article 21 of the Constitution of India enjoins that no person shall be deprived of his life or personal liberty except according to the procedure established by law. In **Maneka Gandhi** (supra), the Apex Court declared that the procedure referred to in Article 21 of the Constitution of India shall be 'just, fair and reasonable'.

64. The principle laid down in **Maneka Gandhi** (supra) was reiterated in **Hussainara Khatoon And Others (I) v. Home Secretary, State Of Bihar¹⁰**, **Sunil Batra v. Delhi Administration And Others¹¹**, **Vakil Prasad Singh v. State of Bihar¹²**, **Ranjan Dwivedi v. CBI¹³**, **Mohd. Arif v. Supreme Court of India¹⁴**.

65. Article 39A of the Constitution of India also emphasised the need for free Legal Aid by suitable legislation or schemes and to ensure that justice shall not be denied to any citizen by a reason of economic or other disabilities.

66. Article 22(1) of the Constitution of India also enjoins that the arrestee/detainee shall be informed of the grounds of his arrest and shall not be denied his right to consult a legal practitioner of his choice.

67. The Apex Court, time and again, by several judicial pronouncements referred to above has categorically declared that every

¹⁰ 1979 AIR SC 1360

¹¹ 1978 AIR SC 1675

¹² (2009) 3 SCC 355

¹³ (2012) 8 SCC 495

¹⁴ (2014) 9 SCC 737



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accused has a right to a fair trial by a competent court. It is the duty of the court to ensure that a reasonable opportunity is afforded to the accused to defend himself either through a lawyer of his choice or a legal aid lawyer.

68. The right to fair trial is a fundamental guarantee under Article 21 and serious lapses such as ineffective legal representation, lack of cross-examination and improper recording of statements would vitiate the trial. The constitutional right afforded to an accused charged with an offence to defend himself is not illusory or imaginary.

69. Now coming back to the instant case. This is a classic example of how a fair trial can be denied to an accused. We have carefully examined the order sheet of S. C. No. 267/2012.

70. The records would reveal that the date of occurrence of the crime was on 18.09.2011. During the Onam celebration, a stage programme was organised by the Royal King Arts and Sports Club, Kunnelpeedika. In connection with that programme two groups of persons were involved in playing cards in consideration of money. There occurred some altercation and scuffle. The prosecution alleges that in the meanwhile the accused inflicted a stab injury on the deceased Vijeesh, which ultimately resulted in the death of Vijeesh.

71. The accused was arrested on 24.09.2011. After the committal proceedings, the case was made over to the Court of Session, Kottayam. Originally the case was made over to the Additional Sessions Judge -II, Kottayam. The appellant/accused was produced before the Additional



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Sessions Court - II on 09.08.2012. Later, as per the order of the Sessions Court, the matter was transferred to the Additional Sessions Court - IV, Kottayam to consider it along with the counter case. The trial was concluded on 16.10.2019.

72. The records would reveal that the accused has been in judicial custody for more than seven years in a Sessions Court as an under-trial prisoner. It is pertinent to note that he was not represented by a lawyer either of his choice or a Legal Aid Counsel during a substantial period of the said seven years. The proceedings of 05.09.2012 would indicate that the accused has filed an application for bail. On 24.09.2012, bail was granted to him and there was a direction to execute a bond for his release. Release order was also issued on 24.09.2012.

73. However, the accused continued to be in judicial custody till the conclusion of the trial. The reason why the accused remained in judicial custody for more than seven years is not clear from the order sheet. The order sheet would reveal that the accused was represented by a lawyer during the initial stages of enquiry and he filed fresh vakalat on 15.05.2013.

74. On 02.06.2014, the counsel for the accused relinquished the vakalat. The accused on that day submitted before the court that he would himself conduct the case even though the court offered to give the assistance of a Legal Aid Counsel, that was rejected by the accused.

75. On going through the proceedings sheet of S.C. No. 267/2012, it is discernible that the accused himself conducted the cross-examination of



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PWs.1 to 6, without the assistance of a qualified and competent legal practitioner of either his own choice or a Legal Aid Counsel appointed by the court. Thereby, great prejudice is caused to the valuable right of defence of the accused.

76. In the instant case, the trial court has failed to ensure that the accused is represented by a competent lawyer to defend his case, discarding the directions issued by the Apex Court.

77. Yet another illegality pointed out by the learned counsel for the appellant is that the learned Sessions Judge has recorded the evidence of the material witnesses in the absence of the accused. At this juncture it would be worthwhile to extract section 273 of Cr.P.C.

273. Evidence to be taken in presence of accused.—Except as otherwise expressly provided, all evidence taken in the course of the trial or other proceeding shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in the presence of his pleader:

Provided that where the evidence of a woman below the age of eighteen years who is alleged to have been subjected to rape or any other sexual offence, is to be recorded, the court may take appropriate measures to ensure that such woman is not confronted by the accused while at the same time ensuring the right of cross-examination of the accused.



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78. Section 273 enjoins that the evidence of the witnesses is to be recorded in the presence of the accused, so that he can effectively take up his defence.

79. In **Atma Ram and Others v. State of Rajasthan**¹⁵ the Apex Court observed that the right of an accused with respect to evidence to be taken in his presence is a valuable right.

80. The Apex Court in **A.T. Mydeen v. Commr. of Customs**¹⁶ observed as under:

“ 19. Section 273CrPC provides that except as otherwise expressly provided, all evidence taken in the course of the trial or other proceeding shall be taken in the presence of the accused, or, when his attendance is dispensed with, in the presence of his pleader.

20. The exception of this provision finds place in Section 205CrPC wherein personal attendance of accused is dispensed with and he is permitted to appear by his pleader and also in Section 299CrPC, which provides for recording of evidence in the absence of the accused under certain eventualities like absconding of accused or commission of an offence punishable with death or imprisonment for life by some person or persons unknown. However, this exception has few conditions to be strictly followed by the trial court and prosecution. Besides such an exception, the basic principle of recording evidence in presence of the accused is imperative.”

¹⁵ (2019)20 SCC 481

¹⁶ (2022) 14 SCC 392



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81. The learned Sessions Judge, in the case on hand, has examined numerous witnesses in the absence of the accused. On 29.08.2018, the accused was not produced from the judicial custody. But, on that day, the learned Sessions Judge examined PW8. On 15.10.2018, the learned Sessions Judge examined PWs. 13 to 16 and marked Exts.P5 to P8 in the absence of the accused. On 14.01.2019, the learned Session Judge examined PW29 in the absence of the accused.

82. The proceedings sheet would reveal that the learned Sessions Judge committed a grave illegality by examining the prosecution witnesses in the absence of the accused. The learned Sessions Judge has acted in flagrant violation of Section 273 of Cr.P.C. and overlooked the binding precedents of the Apex Court on this point.

83. The learned counsel for the appellant would then point out that the learned Sessions Judge has denied fairness to the learned Public Prosecutor also. Certain prosecution witnesses were examined in the absence of the learned Public Prosecutor.

84. Going through the depositions of PWs.7, 9 and 10 would make it explicitly clear that those prosecution witnesses were examined in the absence of the learned Public Prosecutor. The learned Sessions Judge has also recorded in the deposition that those witnesses were examined in the absence of the Public Prosecutor. At this juncture, it would be useful to extract some portions of the deposition of PW10:



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“കേസിൽ Prosecutor എ സഹായം ആവശ്യം ഉണ്ടോ (C.Q) ആവശ്യം ഇല്ല (A).

കേസിൽ എന്താണ് പറയാനുള്ളത് (C.Q).

.....

Re-examination nil since Addl. P.P. is absent.”

85. The approach of the learned Sessions Judge is illegal and unfair. It is a trite law that the court shall afford a fair opportunity to the prosecution and the defence to adduce evidence in order to substantiate their contentions.

86. The learned Sessions Judge herself assumed the role of Public Prosecutor and took up the chief examination by herself and thereby exceeded the powers vested in the court.

87. It is trite law that the Judge is not expected to act as a mute spectator during the course of a trial. By virtue of Section 165 of the Indian Evidence Act, a Judge can put questions to the witnesses to uncover the truth.

88. However, it is impermissible for a Judge to assume the role of a Public Prosecutor by usurping into the powers of a Public Prosecutor.

89. In **Ram Chander v. The State of Haryana**¹⁷ the Apex Court observed as under:

“With such wide powers the Court must actively participate in the trial, to elicit the truth and to protect the weak and the innocent. **It must, of course, not assume the role of a prosecutor in putting questions.** The functions of the counsel, particularly

¹⁷ 1981 KHC 626



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those of the Public Prosecutor, are not to be usurped by the judge, by descending into the arena as it were. Any questions put by the judge must be so as not to frighten, coerce, confuse or intimidate the witnesses.....”

90. The learned counsel for the appellant would then argue that the trial in this case was conducted in a piecemeal manner and took almost five years for the completion of the trial. The learned counsel would submit that continuous and prolonged trial for several years is against the spirit of Section 309 of the Code of Criminal Procedure and against the binding precedents of the Apex Court and in flagrant violation of the several circulars issued by this Court. On a perusal of the proceedings sheet, it is evident that the charge against the appellant was framed on 22.11.2014. The trial was concluded only on 16.10.2019. During this period of almost five years, the case was adjourned from time to time, scheduled and rescheduled on several occasions.

91. At this juncture, it may be profitable to extract Section 309 of the Code of Criminal Procedure.

“309. Power to postpone or adjourn proceedings.—

(1) In every inquiry or trial the proceedings shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded:

Provided that when the inquiry or trial relates to an offence



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under section 376, [section 376A, section 376AB, , section 376B, section 376C, section 376D, section 376DA or section DB of the Indian Penal Code (45 of 1860), the inquiry or trial shall] be completed within a period of two months from the date of filing of the charge sheet.]

(2) If the Court, after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody:

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time:

Provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing:

Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him.]

Provided also that—

(a) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party;

(b) the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment;

(c) where a witness is present in Court but a party or his pleader is not present or the party or his pleader though present in Court, is not ready to examine or cross-examine the witness, the Court may, if thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the



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examination-in-chief or cross-examination of the witness, as the case may be.

Explanation 1.—If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

Explanation 2.—The terms on which an adjournment or postponement may be granted include, in appropriate cases, the payment of costs by the prosecution or the accused.”

92. Section 309 enjoins that in every inquiry or trial, the proceedings shall be continued on a day-to-day basis. If the Court is of the view that the matter is to be adjourned for a longer period, the Court shall record the reasons.

93. The second proviso to sub clause (2) of Section 309 mandates that the Judge shall record special reasons for not examining a witness who is present in the Court. The third proviso to the aforesaid clause makes it amply clear that adjournment shall not be granted merely on the ground that the counsel made a request for adjournment.

94. The very object of Section 309 Cr.PC is to ensure that once the trial is started, it is to be continued on a day-to-day basis without it being prolonged for several months, unless there are some special reasons which are beyond the control of the Court. In the instant case, the trial was prolonged for about five years after the framing of the charge. It is pertinent to note that the accused remained in judicial custody for a prolonged period



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of seven years during the inquiry and trial.

95. The Apex Court in **Lt. Col. S.J. Chaudhary v. State (Delhi Admn.)**¹⁸ observed that an entirely wholesome practice for the trial is to go on from day-to-day. It is most expedient that the trial before the Court of Session should proceed and be dealt with continuously from its inception to its finish. Not only will it result in expedition, it will also result in the elimination of manoeuvre and mischief. It will be in the interest of both the prosecution and the defence that the trial proceeds from day-to-day. It is necessary to realise that Sessions cases must not be tried piecemeal. Before commencing a trial, a Sessions Judge must satisfy himself that all necessary evidence is available. If it is not, he may postpone the case, but only on the strongest possible ground and for the shortest possible period. Once the trial commences, he should, except for a very pressing reason which makes an adjournment inevitable, proceed de die in diem until the trial is concluded.

96. **In the Central Bureau of Investigation v. Mir Usman alias Ara alias Mir Usman Ali**¹⁹, the Apex Court, referring to a catena of decisions, reiterated the mandate to comply with Section 309 CrPC. The relevant paragraph is extracted hereunder:

“31. The right to speedy trial is implicit in Article 21 of the Constitution of India. The first written articulation of the right to speedy trial appeared in 1215 in the Magna Carta: “We

¹⁸ (1984) 1 SCC 722

¹⁹ 2025 SCC OnLine SC 2066,



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will sell to no man, we will not deny or defer to any man either justice or right.” Article 21 of the Indian constitution declares that “no person shall be deprived of his life or personal liberty except according to the procedure laid by law.” Justice V.R. Krishna Iyer in Babu Singh v. State of U.P., (1978) 1 SCC 579 : AIR 1978 SC 527 remarked, “Our justice system even in grave cases, suffers from slow motion syndrome which is lethal to “fair trial” whatever the ultimate decision. Speedy justice is a component of social justice since the community, as a whole, is concerned in the criminal being condignly and finally punished within a reasonable time and the innocent being absolved from the inordinate ordeal of criminal proceedings.” In the case of Sheela Barse v. Union of India, (1986) 3 SCC 632 : (1986) 3 SCR 562, this Court has held that the right to speedy trial is a fundamental right. Further it was stated by this Court that the consequence of violation of the fundamental right to speedy trial would be that the prosecution itself would be liable to be quashed on the ground that it is in breach of fundamental right.

32. Section 309 has been inserted in the Cr.P.C. keeping in view this constitutional mandate of speedy trial.”

97. In the instant case, the matter was adjourned for more than hundred times after the framing of charge. It appears that the reasons recorded by the learned Sessions Judge, on many occasions, are unjustifiable and not compelling.

98. For example, on 27.06.2019, it is written in the proceedings sheet that “The accused produced, Due to the pressure of other targeted cases, this case is adjourned for hearing.” The Apex Court time and again



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emphasized the need for expeditious trial of custodial cases. But the learned Sessions Judge, as it appears from the order sheet, attributed much priority to other targeted cases than to the trial of a custodial matter.

Conclusion:

99. On a careful consideration of the records of this case, the relevant statutory provisions, the mandate of Constitution and the binding precedents of the Honourable Apex Court discussed in the foregoing paragraphs, we have no hesitation in holding that a fair trial is denied to the accused in the case on hand. The accused had to face the prolonged custodial trial which was conducted in a piecemeal manner. The accused was not represented by a competent lawyer during a substantial period in the course of the trial. He had to cross examine the material witnesses (PWs.1 to 6) by himself. Numerous witnesses were examined in his *absentia*. The records would further reveal that the learned Sessions Judge has assumed the role of Public Prosecutor and conducted chief examination by herself in the absence of the Public Prosecutor.

100. In the light of the above discussion, we are of the considered view that the finding of guilt, conviction and sentence arrived at by the learned Sessions Judge are liable to be set aside. The alleged crime was committed on 18.09.2011. The accused remained in judicial custody for about fourteen years during the investigation, inquiry, trial and during the pendency of this appeal. Therefore, we feel that a direction to conduct a



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‘denovo trial’ in this matter may not be just, fair and proper.

101. Considering the peculiar facts and circumstances of this matter, we deem it appropriate to issue directions to the Registry to forward a copy of this judgment to the Director, Kerala Judicial Academy for future guidance to the Sessions Judges of the State of Kerala, to ensure that such episodes would not occur in future.

In the result;

1. The Criminal Appeal is allowed.
2. The impugned judgement of the learned Additional Sessions Judge in S.C.No.267/2012 is set aside.
3. The appellant/accused is set at liberty forthwith, if his custody is not necessary for any other case.
4. The Bail Bond executed by him stands cancelled.
5. Fine, if any, paid by the appellant shall be refunded.

Sd/-
RAJA VIJAYARAGHAVAN V.
JUDGE

Sd/-
K. V. JAYAKUMAR
JUDGE

msp/BR/Sbna